



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MTI/171541

PRELIMINARY RECITALS

Pursuant to a petition filed January 19, 2016, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Marathon County Department of Social Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on March 8, 2016, at Wausau, Wisconsin.

The issue for determination is whether the Department correctly sought to intercept the petitioner's state income tax refund to collect an MA overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], Lead ES Spec.
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. The petitioner was certified for BCP from at least February 2015, through March 2015.
3. On April 29, 2015, the county agency mailed written notice to the petitioner at his correct mailing address, advising that he had been overpaid \$406.61 in BCP benefits for the February through

March 2015, period. The notice further advised that he could appeal the overpayment determination within 45 days. See Exhibit 3. The petitioner did not file an appeal of the overpayment calculation.

4. Following the issuance of three dunning letters, the Department mailed a state income tax refund interception notice to the petitioner on December 11, 2015. The notice was sent to the petitioner's correct mailing address on file with the Department, and was received by the petitioner. The amount remaining for interception is \$406.61. The petitioner filed a hearing request with this Division on January 19, 2016 (postmark date).

DISCUSSION

Wis. Stat. §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of W-2 benefits, overissuance of food stamps, and overpayment of AFDC and Medical Assistance/BCP payments made incorrectly.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at § 49.85(3).

The hearing right is described in Wis. Stat. § 49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

However, an interception hearing on the merits is only available if the petitioner files the hearing request within **30 days** of receiving the interception notice:

(3) NOTICE REQUIREMENTS.(a)

2. Inform the person that he or she may appeal the determination of the department of health services to certify the amount by requesting hearing under sub.(4) within 30 days after the date of the letter and inform the person of the manner in which he or she may request a hearing.

Wis. Stat. §49.85(3)(a)2.

The petitioner should have appealed the interception action within 30 days of the December 11, 2015 interception notice. He does not assert that the Department has subsequently failed to credit his payment amounts (if any) against the certified amount. When a person fails to appeal a negative decision within the statutory time limits, the Division of Hearings and Appeals no longer has jurisdiction over the merits of the appeal. Because the petitioner did not request a hearing on the merits of the interception determination within 30 days of the December 11, 2016, notice, the Division does not now have jurisdiction to consider the merits of either the underlying overpayment determination or the interception action in the context of a tax interception appeal.

CONCLUSIONS OF LAW

1. The ALJ lacks jurisdiction to consider the merits of the petitioner's tax interception appeal, as it was not timely filed.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of March, 2016

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 9, 2016.

Marathon County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability